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9 *Attorneys for the Fire Victim Trustee*

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

13 In re:

14 **PG&E CORPORATION,**

15 **- and -**

16 **PACIFIC GAS AND ELECTRIC**
17 **COMPANY,**
18 **Debtors.**

- 19 ☐ Affects PG&E Corporation
20 ☐ Affects Pacific Gas and Electric Company
21 ☒ Affects both Debtors

22
23 ** All papers shall be filed in the Lead Case,
24 No. 19-30088 (DM).*

Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**FIRE VICTIM TRUSTEE'S OBJECTION
TO CONSOLIDATED MOTION TO
ALLOW/DEEM TIMELY LATE FILING
OF CLAIMANTS, AND MEMORANDUM
OF POINTS AND AUTHORITIES AND
DECLARATION OF MICHAEL S.
HENDERSON IN SUPPORT THEREOF**

[Relates to Docket Number 13327]

Hearing Date: January 10, 2023

Hearing Time: 10:00 a.m.

Place: Hearing will be conducted telephonically or
by video

1 Cathy Yanni, in her capacity as the Trustee (the “**Trustee**”) of the Fire Victim Trust, by and
2 through her undersigned counsel, hereby submits this Objection to the *Motion to Allow/Deem*
3 *Timely Late Filing of Claimants, and Memorandum of Points and Declaration of Michael S.*
4 *Henderson in Support Thereof* [Docket No. 13327] (the “**Motion**”) filed on December 9, 2022
5 regarding thirty-nine separate proofs of claim filed between November 30, 2022 and December 7,
6 2022 on behalf of one hundred seven (107) individual claimants (all claimants collectively,
7 “**Movants**”) listed on Exhibit 1 hereto. In support of this Objection, the Trustee respectfully states
8 as follows:

9 **PRELIMINARY STATEMENT**

10 The Motion seeks to have the claims of more than one hundred individual claimants
11 deemed timely for the purpose of administration by the Trust with little concern for the Fire
12 Victims who largely filed their proofs of claim *more than three years* before Movants. Once
13 again, this Motion parrots the exact language used by prior late claim motions down to the boiler
14 plate statements of “particular circumstances” for all Movants. As Movants’ claims of excusable
15 neglect for their extremely long delays in filing their proofs of claim all are based on the fact that
16 they only recently learned that their claims might be compensable, the Court should deny the
17 Motion for the reasons cited in the Court’s December 21, 2022 *Amended Order Denying Motions*
18 *to Allow Late Claims* [Docket No. 13377] (the “**Late Claim Order**”).

19 **RELEVANT BACKGROUND**

20 1. On January 29, 2019, PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and
21 Electric Company (“**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the
22 “**Debtors**”), commenced with the Court voluntary cases under chapter 11 of the Bankruptcy Code
23 (the “**Chapter 11 Cases**”). The Reorganized Debtors filed the Chapter 11 Cases to address the
24 billions of dollars of damage and loss relating to the devastating 2015, 2017 and 2018 California
25 fires and to provide compensation to wildfire victims.

26 2. On March 14, 2019, the Debtors filed their schedules of assets and liabilities. By
27 Order dated July 1, 2019, the Court established October 21, 2019 (the “**Bar Date**”) as the last date
28 to file proofs of claim in the Chapter 11 Cases [Docket No. 2806] (the “**Bar Date Order**”). By

1 Order dated November 11, 2019, the Court extended the Bar Date to December 31, 2019 (the
2 “**Extended Bar Date**”) for unfiled, non-governmental Fire Claimants [Docket No. 4672].

3 3. As a result of the Court’s careful consideration of this issue and the thoughtful
4 manner in which the Debtors redoubled their efforts to reach additional Fire Victims, more than
5 82,000 claimants, some of whom suffered unfathomable losses, filed their claims in a timely
6 manner.

7 **OBJECTION**

8 4. Movants assert that their delays in filing their proofs of claim – between 1,065 and
9 1,072 days after the Extended Bar Date – were “reasonable” because they only recently learned that
10 their claims were compensable. Yet there are more than 1,700 Fire Victims who filed claims for
11 injuries similar to those asserted by Movants – emotional distress claims that were not associated
12 with a submitted property claim – before the Extended Bar Date, without waiting to see if they
13 would receive compensation for those claims. Importantly, this figure does not include claimants
14 (for example, children) whose claims were submitted on the same proof of claim as another
15 claimant who asserted property-related claims (such as a parent). Clearly, Movants’ claim that they
16 “received absolutely no notice whatsoever of their entitlement to file claim” is overstated at best.
17 As the Court noted in the Late Claim Order, “[d]ue process requires notice of the opportunity to file
18 a claim. That was provided here and generally to thousands of Wildfire Claimants. Due process
19 does not require the awareness of the type of claim that might have been filed.” Late Claim Order
20 at 6:28-7:4.

21 **Application of Pioneer Factors**

22 1. In *Pioneer* the Supreme Court applied the majority of what was then the Ninth
23 Circuit test for determining whether a failure to timely file a proof of claim was due to excusable
24 neglect: (1) whether granting the delay will prejudice the debtor; (2) the length of the delay and its
25 impact on efficient court administration; (3) whether the delay was beyond the reasonable control
26 of the person whose duty it was to perform; and (4) whether the creditor acted in good faith. *Id.*,
27 507 U.S. at 395, 113 S. Ct. at 1498.

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1 **Deeming Movants' Late Claims "Timely" Will Prejudice the Trust**

2 2. The first consideration in determining whether a late claim filing was the result of
3 "excusable neglect" under *Pioneer* is the danger of prejudice to the debtor. This factor is irrelevant
4 in the present case with respect to the Debtors because the Trust has taken the place of the Debtors
5 with respect to Fire Victim Claims. As noted in the Late Claim Motion with respect to fewer total
6 claimants than the number represented by Movants, "the impact on administration is more than de
7 minimis and would prejudice the FVT." Late Claim Motion at 6:14-15.

8 **The Length of Movants' Delay is Extreme and Negatively Impacts Trust Administration**

9 1. The second consideration under *Pioneer* is the length of delay and its potential
10 impact on judicial proceedings. Movants filed their proofs of claim between **1,065 and 1,072 days**
11 **after the Extended Bar Date** yet claim that their nearly three-year delays were "reasonable." As
12 noted above, the Trust has a limited fund from which to pay all Fire Victim Claims. As such, the
13 Trust cannot finally determine how much it can pay on account of any Fire Victim Claim until it
14 adjudicates every Fire Victim Claim.

15 2. The continued addition of claims to the Fire Victim Trust prevents the Trust from
16 allocating its limited funds and further extends the time that claimants who timely filed their Fire
17 Victim Claims must wait for final payments, thus delaying the administration of Fire Victim
18 Claims and prejudicing those who hold timely filed Fire Victim Claims with delay. The extreme
19 length of Movants' delay and the impact of a nearly three-year delay on the final payment of timely
20 filed Fire Victim Claims weighs heavily against deeming Movants' claims timely.

21 **Timely Filing Proofs of Claim was not Beyond Movants' Control**

22 3. The third *Pioneer* factor, whether the delay was beyond the late claimant's control,
23 also weighs against granting the relief requested in the Motions. As explained above, the Motion
24 does not provide any basis for a finding of excusable neglect. The boiler plate statements used to
25 describe Movants' circumstances – the very same statements used by claimants in the late claim
26 motions recently denied by the Court – fail to explain what prevented Movants from filing proofs
27 of claim earlier. The third *Pioneer* factor therefore must also be decided in favor of the Trust and
28 the Fire Victims who have made the effort to engage with the Trust.

1 **Even Without Bad Faith, Equity Does Not Favor Movants Over Other Fire Victims**

2 4. While the Trustee does not believe that Movants lack the good faith that comprises
3 the final consideration listed by the *Pioneer* court, it is clear from the Motion that Movants were
4 not prevented from filing timely claims by any circumstances. None of Movants' neighbors who
5 filed timely proof claims knew whether the Trust would compensate them for every claim they
6 asserted against PG&E, yet they filed their claims before the Extended Bar Date rather than waiting
7 to hear what others had received from the Trust. Many filed without the benefit of counsel to guide
8 them through the process. The Motion fails to state any facts that justify Movants' nearly three-
9 year delays in filing their proof of claim.

10 5. In addition, as is evidenced by overwhelming number of late claim motions filed
11 within the two weeks alone, allowing Movants' proof of claim to be deemed timely filed without
12 extenuating circumstances would encourage other latecomers to file similar motions. The Trustee
13 provided notice that the Trust would begin strictly reviewing all late claim motions filed after
14 September 30, 2022. The September 30 "deadline" was widely disseminated by social media and
15 other "word of mouth" sources that Movants claim gave them notice their claims were
16 compensable.

17 6. For the foregoing reasons, Movants fail to meet their burden for establishing
18 "excusable neglect" for filing their proofs of claim nearly three years after the Extended Bar Date.
19 Movants' proofs of claim listed on Exhibit 1 hereto should not be deemed timely for the purpose of
20 administration by the Trust.

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CONCLUSION

The Trustee respectfully requests that this Court deny the relief requested in the Motion and grant the Trust such other and further relief as may be just.

DATED: December 22, 2022

BROWN RUDNICK LLP

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EXHIBIT 1

List Of Movants' Proofs Of Claim

	<u>CLAIMANT(S)</u>	<u>POC NUMBER</u>	<u>POC FILING DATE</u>
1.	Kelly Back Laura Thibodean-Back Ryle Back L.B., a minor (parent, Kelly Back)	109804	11/30/2022
2.	Ralph Barnes Darryn Chandler	109785	12/01/2022
3.	Rebecca Black	109805	11/30/2022
4.	John Brodey Cristine Marcus	109793	12/01/2022
5.	Matthew G. Burtch Mineko Burtch	109814	11/30/2022
6.	Linda Citti Luca Citti Daniele Citti Isabella Citti	109784	12/01/2022
7.	David Clawson Tristan Clawson	109800	12/01/2022
8.	Mary Coscia Anthony Coscia I.C., a minor (parent, Mary Coscia) E.C., a minor (parent, Mary Coscia)	109811	11/30/2022
9.	Amanda Cream	109790	12/01/2022
10.	Susan Davis Clifford Davis	109786	12/01/2022
11.	Dante Digiacoimo Gina Digiacoimo	109824	12/05/2022
12.	Michele Donnelly Keith Williams	109795	12/02/2022
13.	Patricia Donnelly	109812	11/30/2022
14.	Alexis Wright	109819	12/03/2022
15.	Jacob Dorosz	109820	12/03/2022
16.	Tara Duenas Tracy Duenas Dallas Duenas Dylan Duenas D.D., a minor (parent, Tara Duenas)	109813	11/30/2022

	<u>CLAIMANT(S)</u>	<u>POC NUMBER</u>	<u>POC FILING DATE</u>
17.	Kila Gomer Ryan Gomer W.G., a minor (parent, Kila Gomer)	109797	12/02/2022
18.	Jill Gromm Daniel Gromm Trenton Gromm M.G., a minor (parent, Jill Gromm)	109796	12/03/2022
19.	Lisa Hartley	109802	12/01/2022
20.	Marcus Hartley P.H., a minor (parent, Marcus Hartley) A.H., a minor (parent, Marcus Hartley)	109801	12/01/2022
21.	Ron Kamler Sheree Kamler Tyler Cato B.K., a minor (parent, Ron Kamler)	109810	11/30/2022
22.	Tracy Kline Sean Baron C.B., a minor (parent, Tracy Kline) P.B., a minor (parent, Tracy Kline)	109782	11/30/2022
23.	Art Kononuk Soleil Kononuk	109788	11/30/2022
24.	Kevin Landrus Yanisa Landrus	109809	11/30/2022
25.	Matthew Lightner Deja Lightner Jonae Arias S.L., a minor (parent, Matthew Lightner)	109807	11/30/2022
26.	Greg Newton Amy Newton G.N., a minor (parent, Greg Newton) E.N., a minor (parent, Greg Newton) A.N., a minor (parent, Greg Newton)	109826	12/05/2022
27.	Nicole Poole Joseph Poole L.P., a minor (parent, Nicole Poole) K.P., a minor (parent, Nicole Poole)	109798	12/02/2022
28.	Deva Proto Mark Proto	109799	12/02/2022

	<u>CLAIMANT(S)</u>	<u>POC NUMBER</u>	<u>POC FILING DATE</u>
29.	Malcolm Robertson Julia Robertson F.R., a minor (parent, Malcolm Robertson) C.R., a minor (parent, Malcolm Robertson)	109787	11/30/2022
30.	Margaret Russell Blaine Russell	109822	12/02/2022
31.	Steve Schofield Shelly Schofield	109834	12/01/2022
32.	Loren Soukup Jared Soukup B.S., a minor (parent, Loren Soukup) C.S., a minor (parent, Loren Soukup)	109821	12/03/2022
33.	Gregory Tomko Patricia Tomko	109789	12/01/2022
34.	Jennifer Tusa	109794	12/01/2022
35.	Jenifer Week Ben Week Suzanne Week J.W., a minor (parent, Jenifer Week) K.W., a minor (parent, Jenifer Week)	109808	11/30/2022
36.	Constance Weichel	109806	11/30/2022
37.	Laureen Barnes Steve Tuor Tanner Seaton Evan Seaton Skylar Tuor	109837	12/7/2022
38.	Rubi Cordova Cody Cordova Gregg Cordova Marcus Cordova B.C., a minor (parent, Rubi Cordova)	109835	12/07/22
39.	Diana Kline Earl James Kelly Kline	109836	12/07/22